

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JESSE ESCAMILLA, as Special Administrator of)
the Estate of TELESFORA ESCAMILLA,)
deceased,)
).
Plaintiff,) Case No. 2017 L 000060
).
v.) Calendar B
).
AMAZON.COM, LLC;)
AMAZON.COM.DEDC, LLC;)
SMX AMAZON DCH 1;)
AMAZON LOGISTICS, INC.;)
DCH INPAX, LLC;)
INPAX SHIPPING SOLUTIONS, INC.;)
INPAX SHIPPING SOLUTIONS, INC. d/b/a)
DCH INPAX, LLC; and VALDIMAR C. GRAY,)
Individually, and as Agent, Servant and/or)
Employee of AMAZON.COM, LLC;)
AMAZON.COM.DEDC, LLC;)
SMX AMAZON DCH 1;)
AMAZON LOGISTICS, INC.;)
DCH INPAX, LLC;)
INPAX SHIPPING SOLUTIONS, INC.;)
INPAX SHIPPING SOLUTIONS, INC.)
d/b/a DCH INPAX, LLC,)
).
Defendants.)
)

**AMAZON.COM'S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT AT LAW**

The defendant, Amazon.Com, LLC ("Amazon.Com"), by its undersigned attorneys, answers the Complaint at Law filed by the plaintiff Jesse Escamilla ("Plaintiff"), Special Administrator of the Estate of Telesfora Escamilla ("Decedent") as follows:

1. On December 22, 2016, the Plaintiff's decedent, TELESFORA ESCAMILLA, was walking westbound on 28th street in a pedestrian crosswalk, crossing Drake Avenue, in the City of Chicago, County of Cook, and State of Illinois.

FILED
MAR 24 2017
DOROTHY BROWN
CLERK OF CIRCUIT COURT

ANSWER: Amazon.Com is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies those allegations.

2. At the aforesaid time and place, the Defendant, VALDIMAR C. GRAY, was operating a Nissan NV 1500 Cargo Van, traveling westbound on 28th Street and made a left hand turn, southbound onto Drake Avenue, wherein he violently struck the Decedent and killed her.

ANSWER: Amazon.Com is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies those allegations.

3. At said time and place, the Defendant, Valdimar C. Gray, was operating the aforementioned cargo van as the agent, servant and/or employee of the Defendants, AMAZON.COM, LLC, AMAZON.COM.DEDC, LLC, SMX AMAZON DCH 1, AMAZON LOGISTICS, INC., DCH INPAX, LLC; INPAX SHIPPING SOLUTIONS, INC., INPAX SHIPPING SOLUTIONS, INC. d/b/a DCH INPAX, LLC, and each of them.

ANSWER: Amazon.Com denies the allegations contained in this paragraph as they relate to Amazon.Com. Amazon.Com is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph as they relate to other named Defendants and, therefore, denies those allegations. Moreover, the allegations contained in this paragraph are conclusions of law that require no response.

4. At the aforesaid time and place, the Defendant, Valdimar C. Gray, and the Defendants, AMAZON.COM, LLC, AMAZON.COM.DEDC, LLC, SMX AMAZON DCH 1,

AMAZON LOGISTICS, INC., DCH INPAX, LLC, INPAX SHIPPING SOLUTIONS, INC., INPAX SHIPPING SOLUTIONS, INC. d/b/a DCH INPAX, LLC, by and through their agent, servant and/or employee Valdimar C. Gray, had the duty to operate the aforementioned cargo van exercising ordinary and reasonable care and caution so as not to cause injury and/or death to others, specifically, the Plaintiff's decedent, Telesfora Escamilla.

ANSWER: Amazon.Com denies the allegations contained in this paragraph as they relate to Amazon.Com. Amazon.Com is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph as they relate to other named Defendants and, therefore, denies those allegations. Moreover, the allegations contained in this paragraph are conclusions of law that require no response.

5. Despite the aforementioned duty, the Defendants, and each of them, then and there committed one or more of the following careless and negligent acts and/or omissions:

- a. Operated said motor vehicle without keeping a proper and sufficient lookout;
- b. Failed to decrease speed when special hazards existed by reason of the presence of a pedestrian in the roadway, in violation of Illinois Compiled Statutes, 2008, Chapter 625, 5/11-601(a);
- c. Failed to yield the right of way to pedestrians lawfully within, and adjacent to, a crosswalk when turning left, in violation of Illinois Compiled Statutes, 2008, Chapter 635, 5/11-306(a);
- d. Failed to exercise due care to avoid colliding with the Plaintiff, failing to stop, or to give audible warning by sounding horn, in violation of Illinois Compiled Statutes, 2008, Chapter 625, Section 5/11-1003;¹
- d. Failed to give audible warning with the vehicle's horn when such warning was reasonably necessary to ensure safety, in violation of Illinois Compiled Statutes, 2008, Chapter 625, Section 5/12-601(a);
- e. Proceeded at a speed which was greater than reasonable and proper with regards

¹ For clarity, numbering error preserved from the Complaint.

to traffic conditions and the use of the roadway, or which endangered the safety of persons, specifically the Plaintiff's decedent, in violation of Illinois Compiled Statutes, 2008, Chapter 625, Section 5/11-601.

ANSWER: Amazon.Com denies the allegations contained in this paragraph as they relate to Amazon.Com. Amazon.Com is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph as they relate to other named Defendants and, therefore, denies those allegations. Moreover, the allegations contained in this paragraph are conclusions of law that require no response.

6. That as a direct and proximate result of one or more of the aforestated careless and negligent acts and/or omissions by the Defendants, and each of them, the Defendants' cargo van struck with great violence, the Plaintiff's decedent, as she crossed Drake Avenue using the pedestrian cross-walk and ran her over and dragged her on the pavement causing her severe injuries ultimately resulting in her death.

ANSWER: Amazon.Com denies the allegations contained in this paragraph as they relate to Amazon.Com. Amazon.Com is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph as they relate to other named Defendants and, therefore, denies those allegations. Moreover, the allegations contained in this paragraph are conclusions of law that require no response.

7. Plaintiff's decedent, TELESFORA ESCAMILLA, left surviving her six (6) adult children:

JESSE ESCAMILLA – son
BERNARD ESCAMILLA – son
IRMA ESCAMILLA – daughter
GLORIA ESCAMILLA – daughter

LYDIA ESCAMILLA GONZON – daughter
ELEANORE ESCAMILLA – daughter

Each of the Decedent's children have and will continue to suffer great grief, sorrow, mental suffering, loss of love, support, guidance, advice, companionship, affection, financial support and other pecuniary injuries, medical and burial expenses.

ANSWER: Amazon.Com is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies those allegations.

8. This action is being brought for the wrongful death of TELESFORA ESCAMILLA, deceased, pursuant to the Illinois Wrongful Death Act, 740 ILCS 180/1 *et al.*

ANSWER: Admitted.

9. That by reason of the facts set forth above, JESSE ESCAMILLA, as Special Administrator of the Estate of TELESFORA ESCAMILLA, and the Estate of Telesfora Escamilla, have become obligated for and have and will pay large sums of money for reasonable medical bills and funeral expenses pursuant to the Illinois Family Expense Act, 750 ILCS 65/15.

ANSWER: Amazon.Com is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies those allegations. Moreover, the allegations contained in this paragraph are conclusions of law that require no response.

10. The Plaintiff, JESSE ESCAMILLA, has been duly-appointed Special Administrator of the Estate of TELESFORA ESCAMILLA, deceased, by Order of the Circuit Court of Cook County on January 4, 2017.

ANSWER: Amazon.Com is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies those allegations.

WHEREFORE, Amazon.Com respectfully requests that the Court enter judgment in its favor and against Plaintiff, together with the costs of the suit and with such other and further relief as the Court deems just and proper under the circumstances.

AFFIRMATIVE DEFENSES

Amazon.Com, for its Affirmative Defenses, alleges, upon information and belief, hypothetically and in the alternative, without admitting any of the allegations contained in Plaintiff's Complaint at Law and while continuing to deny same, as follows:

FIRST AFFIRMATIVE DEFENSE *Failure to State a Claim*

Plaintiff's Complaint fails to state a claim against Amazon.Com upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE *Third-Party Conduct*

The damages, if any, were caused, in whole or in part, by third parties not under the direction or control of Amazon.Com.

THIRD AFFIRMATIVE DEFENSE *No Legal Duty Owed*

Plaintiff's claims against Amazon.Com are barred, in whole or in part, because Amazon.Com did not owe any legal duty to Plaintiff or Decedent, or, if Amazon.Com owed a legal duty, it did not breach that duty.

FOURTH AFFIRMATIVE DEFENSE
Proximate Cause

Plaintiff's claims against Amazon.Com are barred, in whole or in part, because any and all alleged actions or omissions by Amazon.Com were not a proximate cause of any alleged damages.

FIFTH AFFIRMATIVE DEFENSE
Doctrine of Intervening and/or Superseding Causes

Plaintiff's claims against Amazon.Com may be barred, in whole or in part, to the extent that the damages, if any, were proximately caused by an unforeseeable independent, intervening, and/or superseding cause beyond the control of and unrelated to the conduct of Amazon.Com.

SIXTH AFFIRMATIVE DEFENSE
Limitation of Liability

Plaintiff's claims against Amazon.Com are limited by the applicable lading documents, contracts, or conditions of carriage that relate to the transportation services that may be involved herein.

SEVENTH AFFIRMATIVE DEFENSE
Unrelated, Pre-Existing, or Subsequent Conditions

Plaintiff's claims against Amazon.Com may be barred, in whole or in part, to the extent that the damages, if any, were the result of unrelated, pre-existing, or subsequent conditions unrelated to Amazon.Com's conduct.

EIGHTH AFFIRMATIVE DEFENSE
Conditions Precedent

Plaintiffs' claims against Amazon.Com are barred, in whole or in part, to the extent that Plaintiff has failed to satisfy all conditions precedent to recovery.

NINTH AFFIRMATIVE DEFENSE
Extent of Damages

The damages sought by Plaintiff are barred to the extent that they are excessive, unreasonable, and not proximately caused by any conduct on the part of Amazon.Com.

TENTH AFFIRMATIVE DEFENSE
Contributory Fault

Decedent contributed to her injuries, in whole or in part, by failing, at the time of the alleged accident, to exercise the highest degree of care, and, therefore, any amount due to Plaintiff must be reduced by the proportion of Decedent's own negligence, carelessness, and/or recklessness.

WHEREFORE, Amazon.Com respectfully requests that the Court enter judgment in its favor and against Plaintiff, together with the costs of the suit and with such other and further relief as the Court deems just and proper under the circumstances.

March 24, 2017

Respectfully submitted,

/s/ Rebecca Dircks

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kmulrane@beneschlaw.com

CERTIFICATE OF SERVICE

The undersigned attorney certifies that, on March 24, 2017, a true and accurate copy of *Amazon.Com's Answer and Affirmative Defenses to Plaintiff's Complaint at Law* was served via E-Mail and U.S. Mail, on the following:

Plaintiff's Counsel

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/s/ Rebecca Dircks

Rebecca L. Dircks

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

JESSE ESCAMILLA, as Special Administrator of)
the Estate of TELESFORA ESCAMILLA,)
deceased,)

Plaintiff,)

v.)

AMAZON.COM, LLC;)
AMAZON.COM.DEDC, LLC;)
SMX AMAZON DCH 1;)
AMAZON LOGISTICS, INC.;)
DCH INPAX, LLC;)
INPAX SHIPPING SOLUTIONS, INC.;)
INPAX SHIPPING SOLUTIONS, INC. d/b/a)
DCH INPAX, LLC; and VALDIMAR C. GRAY,)
Individually, and as Agent, Servant and/or)
Employee of AMAZON.COM, LLC;)
AMAZON.COM.DEDC, LLC;)
SMX AMAZON DCH 1;)
AMAZON LOGISTICS, INC.;)
DCH INPAX, LLC;)
INPAX SHIPPING SOLUTIONS, INC.;)
INPAX SHIPPING SOLUTIONS, INC.)
d/b/a DCH INPAX, LLC,)

Defendants.)

Case No. 2017 L 000060

Calendar B

Hon. Daniel T. Gillespie

FILED
MAR 24 2017
DONOTHY BROWN
CLERK OF CIRCUIT COURT

**AMAZON LOGISTICS' ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S COMPLAINT AT LAW**

The defendant, Amazon Logistics, Inc. ("Amazon Logistics"), by its undersigned attorneys, answers the Complaint at Law filed by the plaintiff Jesse Escamilla ("Plaintiff"), Special Administrator of the Estate of Telesfora Escamilla ("Decedent") as follows:

1. On December 22, 2016, the Plaintiff's decedent, TELESFORA ESCAMILLA, was walking westbound on 28th street in a pedestrian crosswalk, crossing Drake Avenue, in the City of Chicago, County of Cook, and State of Illinois.

ANSWER: Amazon Logistics is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies those allegations.

2. At the aforesaid time and place, the Defendant, VALDIMAR C. GRAY, was operating a Nissan NV 1500 Cargo Van, traveling westbound on 28th Street and made a left hand turn, southbound onto Drake Avenue, wherein he violently struck the Decedent and killed her.

ANSWER: Amazon Logistics is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies those allegations.

3. At said time and place, the Defendant, Valdimar C. Gray, was operating the aforementioned cargo van as the agent, servant and/or employee of the Defendants, AMAZON.COM, LLC, AMAZON.COM.DEDC, LLC, SMX AMAZON DCH 1, AMAZON LOGISTICS, INC., DCH INPAX, LLC; INPAX SHIPPING SOLUTIONS, INC., INPAX SHIPPING SOLUTIONS, INC. d/b/a DCH INPAX, LLC, and each of them.

ANSWER: Amazon Logistics denies the allegations contained in this paragraph as they relate to Amazon Logistics. Amazon Logistics is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph as they relate to other named Defendants and, therefore, denies those allegations. Moreover, the allegations contained in this paragraph are conclusions of law that require no response.

4. At the aforesaid time and place, the Defendant, Valdimar C. Gray, and the Defendants, AMAZON.COM, LLC, AMAZON.COM.DEDC, LLC, SMX AMAZON DCH 1, AMAZON LOGISTICS, INC., DCH INPAX, LLC, INPAX SHIPPING SOLUTIONS, INC., INPAX SHIPPING SOLUTIONS, INC. d/b/a DCH INPAX, LLC, by and through their agent, servant and/or employee Valdimar C. Gray, had the duty to operate the aforementioned cargo van exercising ordinary and reasonable care and caution so as not to cause injury and/or death to others, specifically, the Plaintiff's decedent, Telesfora Escamilla.

ANSWER: Amazon Logistics denies the allegations contained in this paragraph as they relate to Amazon Logistics. Amazon Logistics is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph as they relate to other named Defendants and, therefore, denies those allegations. Moreover, the allegations contained in this paragraph are conclusions of law that require no response.

5. Despite the aforementioned duty, the Defendants, and each of them, then and there committed one or more of the following careless and negligent acts and/or omissions:

- a. Operated said motor vehicle without keeping a proper and sufficient lookout;
- b. Failed to decrease speed when special hazards existed by reason of the presence of a pedestrian in the roadway, in violation of Illinois Compiled Statutes, 2008, Chapter 625, 5/11-601(a);
- c. Failed to yield the right of way to pedestrians lawfully within, and adjacent to, a crosswalk when turning left, in violation of Illinois Compiled Statutes, 2008, Chapter 635, 5/11-306(a);
- d. Failed to exercise due care to avoid colliding with the Plaintiff, failing to stop, or to give audible warning by sounding horn, in violation of Illinois Compiled Statutes, 2008, Chapter 625, Section 5/11-1003;¹
- d. Failed to give audible warning with the vehicle's horn when such warning was

¹ For clarity, numbering error preserved from the Complaint.

reasonably necessary to ensure safety, in violation of in violation of Illinois Compiled Statutes, 2008, Chapter 625, Section 5/12-601(a);

- e. Proceeded at a speed which was greater than reasonable and proper with regards to traffic conditions and the use of the roadway, or which endangered the safety of persons, specifically the Plaintiff's decedent, in violation of Illinois Compiled Statutes, 2008, Chapter 625, Section 5/11-601.

ANSWER: Amazon Logistics denies the allegations contained in this paragraph as they relate to Amazon Logistics. Amazon Logistics is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph as they relate to other named Defendants and, therefore, denies those allegations. Moreover, the allegations contained in this paragraph are conclusions of law that require no response.

6. That as a direct and proximate result of one or more of the aforestated careless and negligent acts and/or omissions by the Defendants, and each of them, the Defendants' cargo van struck with great violence, the Plaintiff's decedent, as she crossed Drake Avenue using the pedestrian cross-walk and ran her over and dragged her on the pavement causing her severe injuries ultimately resulting in her death.

ANSWER: Amazon Logistics denies the allegations contained in this paragraph as they relate to Amazon Logistics. Amazon Logistics is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph as they relate to other named Defendants and, therefore, denies those allegations. Moreover, the allegations contained in this paragraph are conclusions of law that require no response.

7. Plaintiff's decedent, TELESFORA ESCAMILLA, left surviving her six (6) adult children:

JESSE ESCAMILLA – son
BERNARD ESCAMILLA – son
IRMA ESCAMILLA – daughter
GLORIA ESCAMILLA – daughter
LYDIA ESCAMILLA GONZON – daughter
ELEANORE ESCAMILLA – daughter

Each of the Decedent's children have and will continue to suffer great grief, sorrow, mental suffering, loss of love, support, guidance, advice, companionship, affection, financial support and other pecuniary injuries, medical and burial expenses.

ANSWER: Amazon Logistics is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies those allegations.

8. This action is being brought for the wrongful death of TELESFORA ESCAMILLA, deceased, pursuant to the Illinois Wrongful Death Act, 740 ILCS 180/1 *et al.*

ANSWER: Admitted.

9. That by reason of the facts set forth above, JESSE ESCAMILLA, as Special Administrator of the Estate of TELESFORA ESCAMILLA, and the Estate of Telesfora Escamilla, have become obligated for and have and will pay large sums of money for reasonable medical bills and funeral expenses pursuant to the Illinois Family Expense Act, 750 ILCS 65/15.

ANSWER: Amazon Logistics is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies those allegations. Moreover, the allegations contained in this paragraph are conclusions of law that require no response.

10. The Plaintiff, JESSE ESCAMILLA, has been duly-appointed Special Administrator of the Estate of TELESFORA ESCAMILLA, deceased, by Order of the Circuit Court of Cook County on January 4, 2017.

ANSWER: Amazon Logistics is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and, therefore, denies those allegations.

WHEREFORE, Amazon Logistics respectfully requests that the Court enter judgment in its favor and against Plaintiff, together with the costs of the suit and with such other and further relief as the Court deems just and proper under the circumstances.

AFFIRMATIVE DEFENSES

Amazon Logistics, for its Affirmative Defenses, alleges, upon information and belief, hypothetically and in the alternative, without admitting any of the allegations contained in Plaintiff's Complaint at Law and while continuing to deny same, as follows:

FIRST AFFIRMATIVE DEFENSE *Failure to State a Claim*

Plaintiff's Complaint fails to state a claim against Amazon Logistics upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE *Third-Party Conduct*

The damages, if any, were caused, in whole or in part, by third parties not under the direction or control of Amazon Logistics.

THIRD AFFIRMATIVE DEFENSE
No Legal Duty Owed

Plaintiff's claims against Amazon Logistics are barred, in whole or in part, because Amazon Logistics did not owe any legal duty to Plaintiff or Decedent, or, if Amazon Logistics owed a legal duty, it did not breach that duty.

FOURTH AFFIRMATIVE DEFENSE
Proximate Cause

Plaintiff's claims against Amazon Logistics are barred, in whole or in part, because any and all alleged actions or omissions by Amazon Logistics were not a proximate cause of any alleged damages.

FIFTH AFFIRMATIVE DEFENSE
Doctrine of Intervening and/or Superseding Causes

Plaintiff's claims against Amazon Logistics may be barred, in whole or in part, to the extent that the damages, if any, were proximately caused by an unforeseeable independent, intervening, and/or superseding cause beyond the control of and unrelated to the conduct of Amazon Logistics.

SIXTH AFFIRMATIVE DEFENSE
Limitation of Liability

Plaintiff's claims against Amazon Logistics are limited by the applicable lading documents, contracts, or conditions of carriage that relate to the transportation services that may be involved herein.

SEVENTH AFFIRMATIVE DEFENSE
Unrelated, Pre-Existing, or Subsequent Conditions

Plaintiff's claims against Amazon Logistics may be barred, in whole or in part, to the extent that the damages, if any, were the result of unrelated, pre-existing, or subsequent conditions unrelated to Amazon Logistics' conduct.

EIGHTH AFFIRMATIVE DEFENSE
Conditions Precedent

Plaintiffs' claims against Amazon Logistics are barred, in whole or in part, to the extent that Plaintiff has failed to satisfy all conditions precedent to recovery.

NINTH AFFIRMATIVE DEFENSE
Extent of Damages

The damages sought by Plaintiff are barred to the extent that they are excessive, unreasonable, and not proximately caused by any conduct on the part of Amazon Logistics.

TENTH AFFIRMATIVE DEFENSE
Contributory Fault

Decedent contributed to her injuries, in whole or in part, by failing, at the time of the alleged accident, to exercise the highest degree of care, and, therefore, any amount due to Plaintiff must be reduced by the proportion of Decedent's own negligence, carelessness, and/or recklessness.

WHEREFORE, Amazon Logistics respectfully requests that the Court enter judgment in its favor and against Plaintiff, together with the costs of the suit and with such other and further relief as the Court deems just and proper under the circumstances.

March 24, 2017

Respectfully submitted,

/s/ Rebecca Dircks

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CERTIFICATE OF SERVICE

The undersigned attorney certifies that, on March 24, 2017, a true and accurate copy of *Amazon Logistics' Answer and Affirmative Defenses to Plaintiff's Complaint at Law* was served via E-Mail and U.S. Mail, on the following:

Plaintiff's Counsel

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Counsel for DCH Inpax, LLC, Inpax Shipping Solutions, Inc., and Valdimar C. Gray

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/s/ Rebecca Dircks

Rebecca L. Dircks